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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 ASHA DANIELS, as an Individual,

15 Plaintiffs,

16 v.

17 BIG GRRRL BIG TOURING, INC,
18 a Delaware Corporation; MELISSA
19 JEFFERSON (aka "LIZZO"), as an
20 Individual; CARLINA
21 GUGLIOTTA, as an Individual; and
22 DOES 1 through 10, inclusive,

23 Defendants.

Case No.: 2:24-cv-03571-FLA-PVC

Assigned for All Purposes to
District Judge: Hon. Fernando L. Aenlle-Rocha
Magistrate Judge: Hon. Pedro V. Castillo

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT BIG
GRRRL BIG TOURING, INC.'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

Date: August 22, 2025

Time: 1:30 p.m.

Hon. Fernando L. Aenlle-Rocha

Courtroom: 6B

Action Filed: September 21, 2023

Removed: April 30, 2024

Trial Date: December 1, 2025

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MEMORANDUM OF POINTS AND AUHTORITIES

I. INTRODUCTION

Plaintiff was fired after making complaints of sexually hostile environment, a racially discriminatory environment, and for seeking accommodations for her injured ankle. Defendants are not sure why she was fired. Amanda Nomura, Plaintiff's supervisor, testified Plaintiff quit. The Tour Manager, Carlina Gugliotta, testified the friction between Plaintiff and Nomura resulted in it just "not working out." Suffice to say, there are genuine disputes of fact with regards to Plaintiff's claims, and the present motion should be denied.

II. FACTUAL BACKGROUND

In September 2022, Daniels designed custom wardrobe pieces for Lizzo's background dancers, work that later prompted her recruitment to the tour. (SSG Nos. 13, 14.) In January 2023, Wardrobe Manager Amanda Nomura—acting for Lizzo's management—personally contacted Daniels, promised she would not be required to perform strenuous physical labor, and recommended her for the Wardrobe Assistant position. (SSG Nos. 3, 6, 8.) Daniels then canceled other professional commitments, including a scheduled fashion show, to accept the role. (SSG No. 7.) On February 14, 2023, she began work as a joint employee of BGBT and CAPS and reported directly to Nomura, who controlled her duties, breaks, movements, and ultimate termination despite lacking formal firing authority. (SSG Nos. 4, 5.) Daniels traveled with the tour through multiple European cities and often worked from 6:00 a.m. until as late as 2:00 a.m., seven days a week, with few or no breaks. (SSG Nos. 12, 138, 139.) Although the tour promoted inclusivity, Daniels was instructed not to speak with Lizzo and to "tone it down" to avoid making Lizzo jealous, and she maintains discrimination occurred despite the diverse cast. (SSG Nos. 15, 16, 88.)

Nomura imposed racially targeted restrictions by refusing Daniels's requests for larger dressing rooms, mirrors, and extra stockings for the Big Grrrls and the opening act. (SSG Nos. 64, 65, 66, 67.) She ordered security to monitor Black artist Bree

1 Runway and her entourage on social media to find a pretext for their removal. (SSG
2 Nos. 68, 69, 70.) Nomura mocked a Big Grrrl by snapping her fingers in a racially
3 stereotypical gesture, imitated Black women in a demeaning manner, ridiculed dancers
4 as “fat,” laughed when they soiled costumes, and referred to Beyoncé with a racial slur.
5 (SSG Nos. 71, 72, 73, 74, 75, 76, 77, 78, 79.) She also sent three local workers home
6 for being “dumb” or “lazy” and berated other crew members regardless of race, abuse
7 Daniels reported to Tour Manager Carlina Gugliotta both orally and by text. (SSG Nos.
8 80, 81, 82, 83, 84, 85, 86.) Daniels herself was labeled “sexually appealing” and told
9 she could not interact with Lizzo, yet she continued to perform her duties successfully
10 and often exceeded expectations. (SSG Nos. 87, 89, 63, 90.)

11 Physically hazardous conditions compounded the hostility. In mid-February
12 2023, Nomura ran a rolling wardrobe rack over Daniels’s right foot and then shoved her
13 when she attempted to rest, causing bruising and swelling; Nomura forced her to keep
14 working in painful shoes, denied her requests to sit, and ignored her plea to move from
15 an upper to a lower bunk. (SSG Nos. 91–104.) Daniels’s acrylic nails later snapped
16 below the nailbeds and bled; she requested proper bandages and medical treatment but
17 received only Band-Aids. (SSG Nos. 105–108, 131, 132.) On March 5, 2023, she
18 suffered an allergic reaction—swelling, itchiness, and disorientation—but, despite
19 notifying Nomura and Gugliotta and asking to see a doctor, received no professional
20 care; a chef eventually provided an over-the-counter pill. (SSG Nos. 109–114, 133, 134,
21 135.) Daniels disputes Defendants’ claim that an on-site medical team was available
22 and states she was forced to work without accommodations. (SSG Nos. 125, 126.)

23 Daniels also faced a sexually hostile atmosphere. A backstage equipment case
24 was decorated with graphic images of male genitalia—later shared in the Crew
25 WhatsApp group—and management took no remedial action. (SSG Nos. 32, 34, 36, 37,
26 38.) A coworker named Kyle carried penis-shaped candies, made lewd gestures, and
27 told sexual jokes in her workspace, conduct Daniels reported to Gugliotta. (SSG Nos.
28 51, 52, 53.) During a bus ride to Amsterdam, Nomura and others openly discussed

1 hiring sex workers, attending sex clubs, and using hard drugs; similar conversations
2 continued after arrival. (SSG Nos. 26, 27, 31, 41, 42, 43, 44, 45.) Daniels relayed these
3 incidents to Gugliotta verbally and in writing and asserts the sexual content substantially
4 contributed to a hostile environment supporting her Title VII and ADA claims. (SSG
5 Nos. 30, 46, 54, 55, 56, 59, 60, 61, 62, 17.)

6 Daniels repeatedly complained that she was “worked to the bone,” denied breaks,
7 and forced to remain on call during supposed rest days, raising these concerns in person
8 and by text to both Nomura and Gugliotta. (SSG Nos. 138, 139.) On March 5, 2023,
9 while still experiencing her allergic reaction, she was abruptly told she would be flown
10 home that evening; she received no reason and soon received flight details confirming
11 her removal. (SSG Nos. 1, 2, 9, 10, 136.) Gugliotta admitted Nomura “wanted her
12 gone,” even though Nomura lacked formal firing authority. (SSG Nos. 127, 128, 137,
13 140.) Daniels was paid through March 17 but prevented from completing the
14 engagement. (SSG Nos. 11, 141.) Defendants later cited safety or interpersonal issues,
15 but Daniels contends those reasons are pretextual because she had been recruited for
16 her design talent, expressed no intention to leave, and received praise from performers
17 and management. (SSG Nos. 140, 141.)

18 **III. LEGAL STANDARD**

19 The basic standard for granting summary judgment is that the court must find
20 there is “no genuine dispute as to any material fact and that the movant is entitled to
21 judgment as a matter of law.” (FRCP 56(a) (emphasis added).)

22 Therefore, the critical issues in ruling on a motion for summary judgment are:
23 Does the dispute involve an issue of “fact”?; Is the fact “material”?; and Is the dispute
24 “genuine”? In addition, the court must “determine whether the legal theory of the
25 motion is sound.” (*Jackson v. Federal Express* (2nd Cir. 2014) 766 F3d 189, 194.) Trial
26 courts attempt to serve the twin aims of (a) properly disposing of cases in which there
27 is no genuine issue as to any material fact, while (b) protecting parties' right to trial
28 when there are such disputed facts. (See Schwarzer, Summary Judgment Under the

1 Federal Rules: Defining Genuine Issues of Material Fact (1984) 99 FRD 465, 466.)
2 Summary judgment is a drastic remedy and is therefore to be granted cautiously:
3 “Neither do we suggest that the trial courts should act other than with caution in granting
4 summary judgment ...” (*Anderson v. Liberty Lobby, Inc.* (1986) 477 US 242, 255.)

5 **IV. LEGAL ARGUMENT IN OPPOSITION**

6 **A. Genuine Dispute of Fact as to Sexual Harassment**

7 “Since an employee's work environment is a term or condition of employment,
8 Title VII creates a hostile working environment cause of action.” [Freeman v. Dal-Tile
9 Corp. (4th Cir. 2014) 750 F3d 413, 420. To state a prima facie case for “hostile
10 environment” sexual harassment under Title VII, plaintiff must allege that:

- 11 • plaintiff was subjected to unwelcome sexual advances, conduct or
12 comments;
- 13 • the harassment complained of was based on sex; and
- 14 • the harassment was “so severe or pervasive” as to “alter the
15 conditions of the victim's employment and create an abusive
working environment.” (*Meritor Sav. Bank, FSB v. Vinson* (1986)
477 US 57, 67.)

16 There is no requirement that plaintiff suffer loss of tangible job benefits or actual
17 injury in order to state a hostile environment harassment claim. [See *Harris v. Forklift*
18 *Systems, Inc.* (1993) 510 US 17, 21; *Gregory v. Daly* (2nd Cir. 2001) 243 F3d 687, 691;
19 *Gales v. California Dept. of Corrections & Rehabilitation Ventura Youth Correctional*
20 *Facility* (CD CA 2021) 2021 WL 342571, *22]

21 As an overall note, Nomura was a supervisor under both the ADA and Title VII.
22 An employee is a “supervisor” for purposes of vicarious liability under Title VII when
23 he or she is empowered by the employer to take tangible employment actions against
24 the victim—“i.e., to effect a significant change in employment status, such as hiring,
25 firing, failing to promote, reassignment with significantly different responsibilities, or
26 a decision causing a significant change in benefits.” (*Vance v. Ball State Univ.* (2013)
27 570 US 421, 429; *Faragher v. City of Boca Raton* (1998) 524 US 775, 803—power to
28 supervise is power “to hire and fire, and to set work schedules and pay rates”; *Ray v.*

1 *International Paper Co.* (4th Cir. 2018) 909 F.3d 661, 668—supervisory power may
2 include power to eliminate voluntary overtime opportunity.) Here, per the Tour Manager,
3 Carlina Gugliotta, Nomura had the ability to decide whether Plaintiff could continue
4 to work for her. (SSG No. 5.) This is an addition to Nomura’s own testimony that
5 Nomura supervised Plaintiff’s work and reprimanded Plaintiff for not working all hours
6 required. (SSG No. 5.) Based thereon, to the extent any unlawful conduct is attributed
7 to Nomura, as a supervisor, Defendant BGBT is vicariously liable for that same conduct.

8 **1. *Sexual Innuendo with Penis Candy and Penis Filled Pictures***
9 ***Creates a Hostile Work Environment Based on Sex.***

10 The offensive conduct must be “sufficiently severe or pervasive to alter the
11 conditions of employment.” *Christian v. Umpqua Bank*, 984 F.3d 801, 809 (9th Cir.
12 2020). “It is enough,” we have held, “if such hostile conduct pollutes the victim’s
13 workplace, making it more difficult for her to do her job, to take pride in her work, and
14 to desire to stay on in her position.” *Steiner v. Showboat Operating Co.*, 25 F.3d 1459,
15 1463 (9th Cir. 1994). “When the workplace is permeated with discriminatory
16 intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the
17 conditions of the victim’s employment and create an abusive working environment, Title
18 VII is violated.” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (internal quotation
19 marks and citations omitted).

20 Context matters. *Sharp v. S&S Activewear, L.L.C.* (9th Cir. 2023) 69 F.4th 974,
21 978. Workplace conduct is to be viewed cumulatively and contextually, rather than in
22 isolation. *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 807 (11th Cir. 2010)
23 (en banc). This approach makes common sense in order to screen out one-off, isolated
24 events and yet benchmark conduct in the context of a specific workplace. Objectionable
25 conduct is not “automatic discrimination because of sex merely because the words
26 used have sexual content or connotations.” *Oncale v. Sundowner Offshore Servs., Inc.*,
27 523 U.S. 75, 80.)

28 //

1 Here, Daniels presents evidence that a jury could find satisfies each element of a
2 prima facie hostile-environment claim. A backstage equipment case emblazoned with
3 photographs of erect penises remained in plain view for weeks and was later
4 photographed and circulated in the crew’s WhatsApp group after management took no
5 remedial action, despite Daniels’s complaints to Tour Manager Carlina Gugliotta (SSG
6 Nos. 32, 34, 36–38, 30, 54, 59). A male coworker, Kyle, routinely carried penis-shaped
7 candies, made lewd gestures, and told sexual jokes in the small wardrobe room where
8 Daniels worked, conduct she likewise reported (SSG Nos. 51–53). During the overnight
9 bus ride to Amsterdam, Nomura and other managers openly discussed hiring sex
10 workers, attending live sex shows, and using hard drugs, and those conversations
11 continued after arrival (SSG Nos. 26, 27, 31, 41–45). Daniels neither invited nor
12 welcomed any of this conduct; to the contrary, she reported it to management, which
13 ignored her complaints, allowing the behavior to persist (SSG Nos. 55, 56, 60–62).

14 These incidents were plainly “sexually charged,” distinguishing them from mere
15 vulgarity and satisfying the requirement that the harassment be “based on sex.”
16 *Christian v. Umpqua Bank*, 984 F.3d 801, 809 (9th Cir. 2020). They also meet Title VII’s
17 severity-or-pervasiveness threshold. The pornography-laden case and Kyle’s daily
18 penis-candy routine were physical, visual, and verbal intrusions into Daniels’s
19 workspace that “pollute[d] the victim’s workplace, making it more difficult for her to
20 do her job, to take pride in her work, and to desire to stay on in her position.” *Steiner v.*
21 *Showboat Operating Co.*, 25 F.3d 1459, 1463 (9th Cir. 1994). The conduct spanned
22 multiple cities over several weeks, was perpetrated or condoned by supervisory
23 personnel, and was amplified by management’s decision to ignore Daniels’s complaints,
24 facts that a reasonable jury could view as rendering the environment abusive under
25 *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993). Context matters: when the
26 evidence is “viewed cumulatively and contextually, rather than in isolation,” *Reeves v.*
27 *C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 807 (11th Cir. 2010) (en banc), the steady
28 drumbeat of penis imagery, lewd jokes, and sex-worker discussions—coupled with

1 management’s ratification—easily surpasses the “one-off” threshold for actionable
2 harassment recognized in *Sharp v. S&S Activewear, L.L.C.*, 69 F.4th 974, 978 (9th Cir.
3 2023).

4 Because Daniels has produced evidence that she was subjected to unwelcome,
5 sex-based conduct that was sufficiently severe or pervasive to alter the conditions of her
6 employment—and because the record shows management knew of the conduct and
7 failed to act—there is at minimum a genuine dispute of material fact precluding
8 summary judgment on her Title VII hostile-environment claim. (SSG Nos. 1–141.)

9 **2. The Sexual Orientation of the Person Creating the Hostile**
10 **Environment is Not a Factor in the Analysis**

11 “[A]n employee’s sexual orientation is irrelevant for purposes of Title VII. (*Rene*
12 *v. MGM Grand Hotel, Inc.* (9th Cir. 2002) 305 F.3d 1061, 1063.) Notably, individual
13 targeting is not required to establish a Title VII violation. See *Reynaga v. Roseburg*
14 *Forest Prods.*, 847 F.3d 678, 687 (9th Cir. 2017).

15 Here, Defendants contend that Kyle’s gestures of “licking dicks” and his daily
16 display of penis-shaped candy cannot give rise to liability because Kyle is a gay man,
17 but *Rene* forecloses that argument. Kyle’s conduct injected graphic sexual content into
18 Daniels’s small workspace, regardless of his orientation, and Daniels reported it as
19 unwelcome and offensive. (SSG Nos. 51–53.) Defendant’s own management then
20 allowed the conduct to continue unabated, further reinforcing its workplace impact.
21 (SSG Nos. 30, 54, 59.)

22 Nor can Defendants evade liability by asserting that Kyle’s behavior was not
23 always aimed directly at Daniels. Under *Reynaga*, Title VII protects employees from an
24 environment “permeated” with sexually charged hostility, even when the offensive acts
25 are not individually targeted. Daniels worked in close proximity to Kyle’s penis-candy
26 routine, the pornographic equipment case, and open discussions of sex workers and live
27 sex shows—all of which transformed her workspace into a sexualized arena. (SSG Nos.
28 26–38, 41–45, 51–56, 60–62.) A reasonable jury could conclude that this cumulative

1 atmosphere altered the conditions of her employment.

2 Because the record shows (1) undisputedly sexual conduct, (2) no legal relevance
3 to the perpetrator’s orientation, and (3) a workplace permeated by persistent sexual
4 imagery and conversation, genuine issues of material fact remain as to whether
5 Defendants created or tolerated a hostile environment in violation of Title VII. (SSG
6 Nos. 1–141.)

7 **B. Genuine Dispute as to Racial Harassment**

8 To succeed on a hostile work environment claim based on race, the plaintiff must
9 demonstrate: ‘(1) that he was subjected to verbal or physical conduct of a racial ...
10 nature; (2) that the conduct was unwelcome; and (3) that the conduct was sufficiently
11 severe or pervasive to alter the conditions of the plaintiff’s employment and create an
12 abusive work environment. (Gales v. California Department of Corrections and
13 Rehabilitation Ventura Youth Correctional Facility (C.D. Cal., Jan. 28, 2021, No. CV
14 19-5025-GW-AGRX) 2021 WL 342571, at *24)

15 Allegations of a racially hostile workplace must be assessed from the perspective
16 of a reasonable person belonging to the same racial or ethnic group as the plaintiff. [See
17 *National R.R. Passenger Corp. v. Morgan* (2002) 536 US 101, 116, fn. 10; *McGinest v.*
18 *GTE Service Corp.* (9th Cir. 2004) 360 F3d 1103, 1115—recognizing that certain words
19 or conduct that appear innocent to nonmembers of the group may be “intolerably
20 abusive” to members of the targeted group; see *Gales v. California Dept. of Corrections*
21 *& Rehabilitation Ventura Youth Correctional Facility* (CD CA 2021) 2021 WL 342571,
22 *24]

23 Here, Daniels—a Black wardrobe assistant—was subjected to a drumbeat of
24 racially charged conduct. Nomura repeatedly referred to Black women on the tour,
25 including dancers and Daniels herself, as “dumb,” “useless,” and “fat,” mocked their
26 bodies, and laughed when they soiled costumes (SSG Nos. 74–79). She snapped her
27 fingers while mimicking a Big Grrrl in front of management, a gesture Daniels
28 recognized as a stereotypical caricature of Black women (SSG Nos. 71–73). Security

1 was ordered to surveil Black artist Bree Runway and her team “to find something to
2 send them home,” an instruction Daniels perceived as racially motivated (SSG Nos. 68–
3 70). Nomura denied Black dancers basic items such as mirrors, larger dressing rooms,
4 and extra stockings—even when inventory was available—while telling Daniels not to
5 remedy the situation, conduct Daniels understood as race-based micro-aggressions
6 (SSG Nos. 64–67). Daniels herself was labeled “sexually appealing” and warned not to
7 interact with Lizzo because of jealousy concerns, further underscoring how race and
8 gender stereotypes were wielded to isolate her (SSG Nos. 87–89). Daniels reported
9 these abuses to Tour Manager Gugliotta, yet management took no effective action,
10 permitting the hostility to persist (SSG Nos. 83–86).

11 Viewed cumulatively and from the perspective of a reasonable Black woman, this
12 pattern of racial slurs, stereotyping, and disparate treatment easily satisfies the “severe
13 or pervasive” requirement articulated in *Gales*. The insults targeted core aspects of
14 Daniels’s identity, were endorsed—or at least tolerated—by supervisory personnel, and
15 permeated her daily working conditions, thereby “alter[ing] the conditions of [her]
16 employment and creat[ing] an abusive working environment” under *Morgan* and
17 *McGinest*. Accordingly, genuine issues of material fact preclude summary judgment on
18 Daniels’s Title VII hostile-environment claim based on race. (SSG Nos. 1–141.)

19 **1. *Nomura Racially Making Fun of Other Black Woman Created***
20 ***the Hostile Work Environment Based on Race***

21 Because the inquiry focuses on the workplace environment as a whole, a hostile
22 environment may exist even if some of the hostility is directed at other workers. Thus,
23 where racial slurs have been directed at a minority race of which plaintiff is a member,
24 similar slurs directed at other minorities may contribute to the overall hostility of the
25 working environment. [*Cruz v. Coach Stores, Inc.* (2nd Cir. 2000) 202 F3d 560, 570
26 (superseded by statute on other grounds as recognized by *Natofsky v. City of New York*
27 (2nd Cir. 2019) 921 F3d 337, 354)—Hispanic employee could complain of hostile
28 environment based on personnel manager's frequent use of Black racial slur in her

1 presence and slurs re Hispanics behind her back; *McGinest v. GTE Service Corp.* (9th
2 Cir. 2004) 360 F.3d 1103, 1117—“if racial hostility pervades a workplace, a plaintiff
3 may establish a violation of Title VII, even if such hostility was not directly targeted at
4 the plaintiff”]

5 Here, Nomura’s repeated ridicule of other Black women on the tour
6 independently contributes to the hostile racial environment Daniels endured because
7 Title VII looks to the workplace atmosphere as a whole, not solely to insults aimed
8 directly at the plaintiff. *Cruz v. Coach Stores, Inc.*, 202 F.3d 560, 570 (2d Cir. 2000);
9 *McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1117 (9th Cir. 2004). Nomura openly
10 mocked the Big Grrrl dancers by snapping her fingers and imitating stereotypical
11 “Black-woman” mannerisms, actions Daniels witnessed in the presence of management
12 (SSG Nos. 71–73). She called Black dancers “dumb,” “useless,” and “fat,” laughed
13 when they soiled costumes, and repeated a racial slur directed at Beyoncé—all while
14 Daniels was within earshot (SSG Nos. 74–79). Nomura further ordered security to
15 monitor Black artist Bree Runway and her entourage on social media in an effort to
16 remove them from the tour, a directive Daniels understood as racially motivated (SSG
17 Nos. 68–70). By denying Black dancers simple necessities like mirrors, larger dressing
18 rooms, and replacement stockings—while instructing Daniels not to intervene—
19 Nomura reinforced a climate of race-based degradation that Daniels was forced to
20 observe daily (SSG Nos. 64–67).

21 These incidents, although sometimes directed at others, “pervade[d] the
22 workplace” and would be “intolerably abusive” to a reasonable Black employee,
23 thereby satisfying the “severe or pervasive” element of a racial hostile-environment
24 claim under *Cruz* and *McGinest* (SSG Nos. 1–141).

25 **C. Genuine Disputes as to the Disability Claims**

26 To prevail in an ADA action, plaintiff must establish that plaintiff: has a
27 “disability”; is a “qualified individual” capable of performing the essential functions of
28 the job either with or without reasonable accommodation; and was unlawfully

1 discriminated against because of their disability. [Kennedy v. Applause, Inc. (9th Cir.
2 1996) 90 F3d 1477, 1481

3 **1. Plaintiff Was Disabled**

4 “Disability” means, with respect to an individual: “(A) a *physical or mental*
5 *impairment* that *substantially limits* one or more *major life activities*; “(B) a *record* of
6 such an impairment; *or* being *regarded* as having such an impairment.” [42 USC §
7 12102(1) (emphasis added); 29 CFR § 1630.2(g); see *Smothers v. Solvay Chemicals,*
8 *Inc.* (10th Cir. 2014) 740 F3d 530, 545—by not contesting employee's evidence on *each*
9 definition of disability, employer “came perilously close to waiving its arguments on
10 this issue” (summary judgment for employer reversed)]

11 Here, “Disability” includes “a physical or mental impairment that substantially
12 limits one or more major life activities,” a record of such an impairment, or being
13 regarded as having one. 42 U.S.C. § 12102(1). Daniels’s rolled ankle left her in constant
14 pain, limited her ability to stand, walk, climb into an upper bunk, and lift heavy cases,
15 and required orthopedic footwear. (SSG Nos. 91–104.) She suffered bleeding nail-bed
16 injuries that restricted manual tasks and, on March 5, experienced an allergic reaction
17 that caused swelling, itchiness, disorientation, and visible distress. (SSG Nos. 105–108,
18 109–114, 131–135.) Management’s awareness of these conditions—evidenced by
19 Daniels’s requests to sit, move bunks, receive bandages, ice, or a doctor—establishes
20 both a record of impairment and that she was at least regarded as disabled. (SSG Nos.
21 125–126.)

22 Despite her impairments and the lack of medical care, Daniels consistently
23 fulfilled her duties, received positive feedback, and “went above and beyond” her role.
24 (SSG Nos. 63, 90.) Her requests—to sit while working, switch to a lower bunk, obtain
25 basic medical supplies, and see a doctor—were modest accommodations that would
26 have enabled her to continue performing essential functions safely. (SSG Nos. 91–108,
27 131–135.)

28 //

1 **2. *Failing to Accommodate is the Causation***

2 If the employee has provided notice to the employer of their disability, resulting
3 limitations, and a requested accommodation, the employer's failure to provide a
4 reasonable accommodation for the disability provides the required nexus between the
5 disability and the alleged discrimination. No evidence of discriminatory intent is
6 necessary. (*Exby-Stolley v. Board of County Commrs.* (10th Cir. 2020) 979 F3d 784,
7 797—no adverse action required in failure to accommodate case)

8 Indeed, the failure to provide a reasonable accommodation can itself be direct
9 evidence of discrimination. [See *EEOC v. Dolgencorp, LLC* (6th Cir. 2018) 899 F3d
10 428, 434-435]

11 Here, Daniels repeatedly put Defendants on notice of her impairments, the
12 limitations they imposed, and the modest accommodations she required—yet
13 management consistently refused to act. She informed Nomura and Gugliotta that the
14 rolling-rack injury left her ankle swollen and painful, asked to sit while working, and
15 requested a lower bunk, ice, pain medication, and access to a doctor (SSG Nos. 91–104,
16 128–130). She alerted them that her acrylic nails had broken below the nailbeds, bled,
17 and required protective bandaging beyond the Band-Aids offered (SSG Nos. 105–108,
18 131, 132). On March 5, she reported an allergic reaction that caused visible swelling
19 and disorientation and again asked to see a medical professional and to rest (SSG Nos.
20 109–114, 133–135). Despite these explicit requests—each of which constitutes notice
21 under *Exby-Stolley v. Board of County Commissioners*, 979 F.3d 784, 797 (10th Cir.
22 2020)—Defendants provided no reasonable accommodation, insisting instead that
23 Daniels continue strenuous labor in painful shoes, climb into an upper bunk, and treat
24 serious injuries with inadequate supplies (SSG Nos. 125, 126, 130–132, 135). Under
25 *Exby-Stolley*, that refusal alone supplies the requisite causal nexus between Daniels's
26 disabilities and Defendants' discriminatory conduct; no additional proof of intent is
27 needed. The timing amplifies the inference: within hours of renewing her
28 accommodation request for medical care on March 5, Daniels was told she was being

1 sent home, and Gugliotta confirmed Nomura “wanted her gone” (SSG Nos. 133–137).
2 This sequence is “direct evidence of discrimination” under *EEOC v. Dolgencorp, LLC*,
3 899 F.3d 428, 434–435 (6th Cir. 2018), because the very act of denying
4 accommodations—followed immediately by termination—demonstrates a genuine
5 dispute of fact whether Defendants violated the ADA.

6 **D. Genuine Dispute as to Retaliation Claims**

7 **1. Title VII Retaliation**

8 To establish a prima facie case, plaintiff must show that: plaintiff engaged in
9 a *protected activity*; the employer subjected plaintiff to an *adverse employment action*;
10 and a *causal link* exists between the protected activity and the employer's action.
11 (*Passantino v. Johnson & Johnson Consumer Products, Inc.* (9th Cir. 2000) 212 F.3d
12 493, 506.)

13 Here, Daniels engaged in protected activity when she repeatedly complained to
14 Tour Manager Gugliotta about the racially hostile conditions created by Nomura, the
15 sexually charged imagery and conversations permeating the wardrobe area, and the
16 denial of basic accommodations for Black dancers and herself (SSG Nos. 30, 46, 54,
17 59, 83–86, 127–128). She also objected to working seven-day weeks without breaks
18 and to being forced to remain on call during supposed rest days—complaints that
19 challenged employment practices she reasonably believed were unlawful under Title
20 VII (SSG Nos. 138–139). Defendants then subjected her to an adverse employment
21 action by firing her on March 5, 2023, and putting her on a same-day flight home (SSG
22 Nos. 1, 2, 136). The causal connection is evident from the close temporal proximity—
23 her complaints spanned the weeks immediately preceding her termination—and from
24 Gugliotta’s admission that Nomura “wanted her gone,” which followed Daniels’s
25 persistent reports of discrimination and harassment (SSG Nos. 133–137, 140). Under
26 *Passantino v. Johnson & Johnson Consumer Products, Inc.*, 212 F.3d 493, 506 (9th Cir.
27 2000), this evidence creates a genuine dispute of material fact on all three prima facie
28 elements of Title VII retaliation.

1 Here, Plaintiff must prove that “the unlawful retaliation would not have occurred
2 in the absence of the alleged wrongful action or actions of the employer.” (*University*
3 *of Texas Southwestern Med. Ctr. v. Nassar* (2013) 570 US 338, 360-363.)

4 Under this standard, the employer will not be liable if it proves it would have taken the
5 same action regardless of retaliatory animus. (*Id.*)

6 Here, uniquely, Defendant is internally inconsistent. On the one hand, Amanda
7 Nomura testified her understanding Plaintiff quit. (SSG Nos. 141-145). On the other,
8 tour manager Gugliotta testified that the Plaintiff was let go because it just wasn't
9 working out between the Amanda and Nomura. (SSG Nos. 141-145) Further adding
10 that the preferred reason is pretextual, Gugliotta testified she was willing to continue to
11 work with Plaintiff about Plaintiff's designed. (SSG Nos. 141-145). As Defendant's is
12 inconsistent from an evidentiary standpoint, it cannot meet its burden of showing that
13 the reason for Plaintiff leaving the tour is independent of any purported complaints or
14 other protected activity.

15 Even if Defendant were consistent regarding the adverse action, the temporal
16 proximity between the complaints and the adverse action create a genuine issue of fact.
17 “Causation sufficient to establish the third element of the prima facie case may be
18 inferred from circumstantial evidence, such as the employer's knowledge that the
19 plaintiff engaged in protected activities and the proximity in time between the protected
20 action and the allegedly retaliatory employment decision.” (*Adetuyi v. City and County*
21 *of San Francisco* (N.D. Cal. 2014) 63 F.Supp.3d 1073, 1089; see also *Yartzoff v.*
22 *Thomas*, 809 F.2d 1371, 1376 (9th Cir.1987).) “At the prima facie stage of a retaliation
23 case, [t]he causal link element is construed broadly so that a plaintiff merely has to
24 prove that the protected activity and the negative employment action are not completely
25 unrelated.” (*Poland v. Chertoff*, 494 F.3d 1174, 1180 n. 2 (9th Cir.2007).)

26 Here, Plaintiff's complaints were within 10 days of the very first written
27 complaint in February 24 (where Plaintiff pointed out she black and felt she was being
28 treated as a slave) and her departure in March 5. Still, Plaintiff testified that she made

1 various complaints throughout this 11 day period to Tour Manager Gugliotta regarding
2 not getting accommodated, sexually charged environment and that she was being
3 treated differently and to her detriment because of her race. (SSG Nos. 141-145.)
4 Because of the at least 11 day proximity between the complaint and the adverse action,
5 the inference of retaliatory motive exists which greats a genuine issue of fact.

6 ***a. Plaintiff Seeks To Correct the Clerical Drafting Error and***
7 ***Separate Her Title VII Retaliation Claim from the ADA***
8 ***Retaliation Claim.***

9 The Second Amended Complaint has listed as the sixth cause of action
10 “Retaliation in Violation of Title VII.” However, in the body of the complaint, the sixth
11 claim is title “Retaliation in Violation of the ADA” while actually citing Title VII
12 protected activity (i.e., complaints sexual and racial harassment) in paragraph 112 of
13 the Second Amended Complaint. Plaintiff respectfully prays the Court allow for the
14 pleading to be corrected as this was a procedural/clerical error, that would not prejudice
15 the Defendants.

16 Rule 15 provides that “[t]he court should freely give leave [to amend the
17 pleadings] when justice so requires.” Fed.R.Civ.P. 15(a)(2). In order for a court to seek
18 “justice,” mere technical deficiencies should not prevent a meritorious action from
19 going forward. (*See, e.g., Simons v. United States*, 497 F.2d 1046, 1049 & n. 2 (9th
20 Cir.1974); *Smith v. Blackledge*, 451 F.2d 1201, 1202–03 & n. 2 (4th Cir.1971).) In this
21 Ninth Circuit, courts may construe other filings, including oppositions to motions, as
22 motions to amend where amendment would be proper. (*See, e.g., Kaplan v. Rose*, 49
23 F.3d 1363 (9th Cir.1994); *Edwards v. Occidental Chem. Corp.*, 892 F.2d 1442, 1445 n.
24 2 (9th Cir.1990); *389 Orange Street Partners v. Ciarcia*, 179 F.3d 656, 665–66 (9th
25 Cir.1999); *see also Eddy v. Virgin Islands Water and Power Authority*, 256 F.3d 204,
26 209–10 (3d Cir.2001) (Alito, J.); *Grisham v. Philip Morris, Inc.* (C.D. Cal. 2009) 670
27 F.Supp.2d 1014, 1022.)

28 //

1 In fact, there is clear authority that “[a]n addition of new issues during the
2 pendency of a summary judgment motion can be treated as a motion for leave to amend
3 the complaint.” *Kaplan*, 49 F.3d at 1370 (citing *Roberts v. Arizona Bd. of Regents*, 661
4 F.2d 796, 798 n. 1 (9th Cir.1981)); *see also* Schwarzer et al., *Federal Procedure Before*
5 *Trial*, at § 14:27.1 (“courts *may* treat a party's raising new claims or defenses on a
6 summary judgment motion as a *motion for leave to amend* the pleadings, which is
7 normally granted *absent prejudice* to the opposing party.”).

8 In deciding whether to grant Plaintiff's motion for leave to amend, the Court notes
9 that the Ninth Circuit has “repeatedly stressed that the court must remain guided by ‘the
10 underlying purpose of Rule 15 ... to facilitate decision on the merits, rather than on the
11 pleadings or technicalities.’ ” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.2000)
12 (quoting *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.1987)). “This policy is to be
13 applied with extreme liberality.” *Eminence Capital, L.L.C. v. Aspeon, Inc.*, 316 F.3d
14 1048, 1051 (9th Cir.2003).) The Supreme Court has outlined five factors to be used in
15 considering a motion to amend, stating:

16 In the absence of any apparent or declared reason—such as
17 undue delay, bad faith or dilatory motive on the part of the
18 movant, repeated failure to cure deficiencies by amendments
19 previously allowed, undue prejudice to the opposing party
20 by virtue of allowance of the amendment, futility of
21 amendment, etc.—the leave sought should, as the rules
require, be “freely given.” (*Foman v. Davis*, 371 U.S. 178,
182 (1962).)

22 Of these factors, “it is the consideration of prejudice to the opposing party that
23 carries the greatest weight.” (*Eminence Capital, L.L.C. v. Aspeon, Inc.*, 316 F.3d 1048,
24 1052 (9th Cir.2003); *see also* *Grisham, supra*, at 1023.)

25 Here, there is no prejudice as Defendants discovery included inquiries of what
26 the complaints were Plaintiff made about the racial harassment (a separate claim) and
27 the sexual harassment claim (another, separate claim). Then, discovery was conducted
28 as to the claim of unlawful harassment in the context of Plaintiff's complaint. As

1 demonstrated in Genuine Disputed Facts Nos. 141-145, Plaintiff testified she told Tour
2 Manager Gugliotta of the lack of accommodation for her injury and illness (i.e.,
3 disability), Plaintiff's perspective she was being treated differently because of her race,
4 and Plaintiff's perspective regarding a sexually charged environment. (See *ibid.*)

5 This drafting error was not noticed until counsel for Plaintiff was there was no
6 attack on the Title VII retaliation claim in the moving papers despite it listed on the
7 caption page. Then, counsel for Plaintiff was the error in the body of the complaint.

8 As there is no prejudice to the defendant as it did garner discovery on the topic
9 of retaliation based on complaints of race and sex harassment (protective activities
10 under Title VII), Plaintiff respectfully prays the Court permit the correction of this error
11 by way of amendment.

12 **2. ADA Retaliation**

13 Under the ADA, "[n]o person shall discriminate against any individual because
14 such individual has opposed any act or practice made unlawful by this chapter." 42
15 U.S.C. § 12203(a). *West v. PBC Management LLC* (N.D. Cal. 2024) 754 F.Supp.3d 914,
16 922.) "To establish a prima facie case of retaliation under the ADA, a plaintiff must
17 show that: (1) he engaged in protected activity; (2) suffered an adverse ... action; and
18 (3) there was a causal link between the two. *Pardi v. Kaiser Foundation Hospitals*, 389
19 F.3d 840, 849 (9th Cir. 2004) (citing *Brown v. City of Tucson*, 336 F.3d 1181, 1186–87
20 (9th Cir. 2003)).

21 Daniels easily satisfies the prima facie elements for ADA retaliation. First, she
22 engaged in protected activity by repeatedly requesting reasonable accommodations for
23 her injured ankle, bleeding nail-bed wounds, and allergic reaction, and by opposing the
24 denial of those accommodations. (SSG Nos. 91–104, 105–108, 109–114, 128–135.)
25 Second, she suffered an adverse employment action when she was abruptly removed
26 from the tour on March 5, 2023, and placed on a same-day flight home. (SSG Nos. 1,
27 2, 136.) Third, the causal link is supported by the tight temporal proximity—her 6:15
28 a.m. text requesting medical attention preceded the termination decision by a matter of

1 hours—and by Gugliotta’s admission that Nomura “wanted her gone,” which came after
2 weeks of Daniels’s accommodation requests and complaints. (SSG Nos. 133–137.)
3 Under *Pardi v. Kaiser Foundation Hospitals*, 389 F.3d 840, 849 (9th Cir. 2004), and
4 *Brown v. City of Tucson*, 336 F.3d 1181, 1186–87 (9th Cir. 2003), this evidence is
5 sufficient to create a genuine dispute as to whether Defendants retaliated against Daniels
6 for exercising rights protected by the ADA.

7 **3. FLSA Retaliation**

8 Too prevail on a retaliation claim under the FLSA, a plaintiff must first make a
9 prima facie showing that: (1) [she] engaged in activity protected by the FLSA; (2)
10 defendant took an adverse employment action; and (3) there was a causal link between
11 the protected activity and the adverse action.” *1165 *Stewart v. Masters Builders Ass’n*
12 *of King & Snohomish Cntys.*, 736 F. Supp. 2d 1291, 1295 (W.D. Wash. 2010)

13 Here, Daniels satisfies each element of a prima facie FLSA-retaliation claim. She
14 engaged in protected activity by repeatedly objecting to her extreme work schedule—
15 working from roughly 6:00 a.m. until 2:00 a.m., seven days a week, without reliable
16 breaks—and by texting Tour Manager Gugliotta that she was “worked to the bone” and
17 denied rest, which constitutes opposition to practices prohibited by the FLSA (SSG Nos.
18 138–139). Defendants then took an adverse employment action when they terminated
19 her on March 5, 2023, and booked her on a same-day flight home (SSG Nos. 1, 2, 136).
20 The causal link is supported by the tight temporal proximity between Daniels’s wage-
21 and-hour complaints and her firing, as well as Gugliotta’s admission that Nomura
22 “wanted her gone” after weeks of those complaints (SSG Nos. 133–137, 140). Under
23 *Stewart v. Masters Builders Ass’n of King & Snohomish Counties*, 736 F. Supp. 2d 1291,
24 1295 (W.D. Wash. 2010), this evidence creates a genuine dispute of material fact on the
25 FLSA retaliation claim.

26 **V. CONCLUSION**

27 Based on the forgoing, Plaintiff respectfully prays the Court finds genuine issues
28 of fact as to all her claims, and deny the present motion for summary judgment or

1 adjudication.

2
3
4 Respectfully submitted,

5
6 Dated: August 1, 2025

WEST COAST EMPLOYMENT LAWYERS, APLC

7
8 BY: 

9 _____
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11 Attorney for Plaintiff,
12 ASHA DANIELS
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1147 South Hope Street, Los Angeles, CA 90015.

On August 1, 2025, I served the foregoing documents described as: **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT BIG GRRRL BIG TOURING, INC.'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT** on the interested parties in this action by placing a true copy or original thereof enclosed in a sealed envelope, addressed as follows: **SEE MAILING LIST**

- ☐ **BY MAIL (FRCP 5):** I am readily familiar with the firm's practice of collection and processing documents for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY FACSIMILE TRANSMISSION (FRCP 5):** I caused such documents to be delivered via facsimile transmittal to the office of the addressee. The transmission(s) reported as complete and without error.
- X **BY ELECTRONIC MAIL (FRCP 5(b)2(E)):** I caused such documents to be to be sent from the e-mail address nefthaly@westcoasttriallawyers.com to the persons at the e-mail address(es) listed in the mailing list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☐ **BY OVERNIGHT DELIVERY (FRCP 5):** I caused such documents to be delivered via express service carrier to the office of the addressee.
- ☐ **BY PERSONAL SERVICE (FRCP 5):** I caused such documents to be hand-delivered to the office of the addressee.

☐ State X Federal

I declare under penalty of perjury pursuant to the laws of the State of California and the Federal Government of the United States of America that the foregoing is true and correct.

Executed on August 1, 2025, at Los Angeles, California.



Madilaine Yazon Venzon

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